

ORIGINAL

DSF
C/M

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
YOLANDA MICATOVICH,

Plaintiff,

-against-

GE HEALTHCARE and GENERAL ELECTRIC
COMPANY,

Defendants.
-----X

MEMORANDUM AND ORDER

Case No. 08-CV-4553 (FB) (JMA)

FILED

IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ AUG 10 2009 ★

BROOKLYN OFFICE

Appearances:

For the Plaintiff:

MARTIN SEGUNDO VASQUEZ, ESQ.

38-08 Junction Blvd

Corona, NY 11368

BLOCK, Senior District Judge:

On July 16, 2009, Magistrate Judge Azrack issued a Report and Recommendation ("R&R") recommending that this action be dismissed without prejudice because the plaintiff has failed to effect timely service of the summons and complaint pursuant to Fed. R. Civ. P. 4(m). *See* R&R at 2. The R&R also stated that failure to object within ten days would preclude appellate review. *See id.* at 2-3. According to the docket, plaintiff's attorney was notified electronically of the filing of the R&R on July 17, 2009; no objections have been filed.

If clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). The Court

will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error, *see Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000); no such error appears here. Accordingly, the Court adopts the R&R without *de novo* review and directs the Clerk to dismiss this action in accordance with the R&R.

SO ORDERED.

S/FB

FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
August 5, 2009